

2007

State of Utah vs. Staceu Marie Nielsen : Brief of Appellant

Utah Court of Appeals

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Ryan Tenney; assistant attorney general; Mark L. Shurtleff; attorney general; Mark R. Decaria; counsel for appellee.

Recommended Citation

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
vs.	:	
STACEY MARIE NIELSEN,	:	
Defendant/Appellant.	:	Appellate Court No. 20070952-CA

BRIEF OF APPELLANT

THIS APPEAL IS FROM A CONVICTION AND SUBSEQUENT SENTENCING TO POSSESSION OR USE OF A CONTROLLED SUBSTANCE, A THIRD DEGREE FELONY; TWO COUNTS OF ASSAULT, CLASS B MISDEMEANORS; CRIMINAL MISCHIEF, A CLASS A MISDEMEANOR, AND INTERFERENCE WITH ARRESTING OFFICE, A CLASS B MISDEMEANOR AND WAS SENTENCED TO JAIL, WHICH WAS SUSPENDED AND DEFENDANT WAS PLACED ON PROBATION, IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR WEBER COUNTY, STATE OF UTAH, THE HONORABLE W. BRENT WEST PRESIDING.

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FILED
UTAH APPELLATE COURTS

JUL - 8 2008

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
vs.	:	
STACEY MARIE NIELSEN,	:	
Defendant/Appellant.	:	Appellate Court No. 20070952-CA

BRIEF OF APPELLANT

THIS APPEAL IS FROM A CONVICTION AND SUBSEQUENT SENTENCING TO POSSESSION OR USE OF A CONTROLLED SUBSTANCE, A THIRD DEGREE FELONY; TWO COUNTS OF ASSAULT, CLASS B MISDEMEANORS; CRIMINAL MISCHIEF, A CLASS A MISDEMEANOR, AND INTERFERENCE WITH ARRESTING OFFICE, A CLASS B MISDEMEANOR AND WAS SENTENCED TO JAIL, WHICH WAS SUSPENDED AND DEFENDANT WAS PLACED ON PROBATION, IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR WEBER COUNTY, STATE OF UTAH, THE HONORABLE W. BRENT WEST PRESIDING.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

vs.

STACEY MARIE NIELSEN,

Defendant/Appellant.

:

:

:

:

District Court Case No. 061901672

Appellate Court No. 20070952-CA

BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

The Appellant is appealing from a Judgment, Sentence and Commitment in the Second District Court for Weber County, Utah, dated November 26, 2007. Jurisdiction for the Appeal is conferred upon the Utah Court of Appeals pursuant to U.C.A. §78-2a-3(2)(e).

ISSUE ON APPEAL AND STANDARD OF REVIEW

DID THE TRIAL COURT DENY THE DEFENDANT THE
RIGHT TO A HEARING ON THE DEFENDANT’S MOTION
TO SUPPRESS THE EVIDENCE?

Standard of Review: This issue should be reviewed under a correction of law standard of review. “Constitutional issues . . . are questions of law that we review for correctness.” *Chen v. Stewart*, 2004 UT 82, ¶ 25, 100 P.3d 1177.

This issue was preserved for appeal when the Defendant filed a motion to suppress (R. 052) and when she raised the issue again in an affidavit to support her motion for a new trial. (R. 189)

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

UNITED STATES CONSTITUTION

FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Sixth Amendment - Rights of Accused in Criminal Prosecutions

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

UTAH CODE ANNOTATED

§58-37-8(2)(a)(i) Prohibited acts -- Penalties.

(2) Prohibited acts B -- Penalties:

(a) It is unlawful:

(i) for any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of his professional practice, or as otherwise authorized by this chapter;

§76-5-102. Assault.

(1) Assault is:

(a) an attempt, with unlawful force or violence, to do bodily injury to another;

(b) a threat, accompanied by a show of immediate force or violence, to do bodily injury to another; or

(c) an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another.

(2) Assault is a class B misdemeanor.

(3) Assault is a class A misdemeanor if:

(a) the person causes substantial bodily injury to another; or

(b) the victim is pregnant and the person has knowledge of the pregnancy.

(4) It is not a defense against assault, that the accused caused serious bodily injury to another.

§76-6-106(2)(c). Criminal mischief.

(2) A person commits criminal mischief if the person:

(c) intentionally damages, defaces, or destroys the property of another; or

§76-8-305. Interference with arresting officer.

A person is guilty of a class B misdemeanor if he has knowledge, or by the exercise of reasonable care should have knowledge, that a peace officer is seeking to effect a lawful arrest or detention of that person or another and interferes with the arrest or detention by:

(1) use of force or any weapon;

(2) the arrested person's refusal to perform any act required by lawful order:

(a) necessary to effect the arrest or detention; and

(b) made by a peace officer involved in the arrest or detention; or

(3) the arrested person's or another person's refusal to refrain from performing any act that would impede the arrest or detention.

§78-2a-3. Court of Appeals jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

STATEMENT OF THE CASE

The Defendant was charged by Information with possession or use of a controlled substance, in violation of U.C.A. §58-37-8(2)(a)(i), a third degree felony; two counts of assault, in violation of U.C.A. §76-5-102, both class B misdemeanors; criminal mischief, a class A misdemeanor in violation of U.C.A. §76-6-106(2)(c), and interference with arresting officer, a class B misdemeanor in violation of U.C.A. §76-8-305. (R. 001-2).

On May 31, 2006, a public defender was appointed to represent the Defendant, and a preliminary hearing was scheduled. (R. 014-15). Following two continuances, the preliminary hearing was scheduled for August 2, 2006. On August 2nd, the Defendant waived her preliminary hearing. (R. 023-34). A pre-trial conference was scheduled for September 6, 2006. (R. 025-26). On September 6, 2006, the Defendant appeared late to court and asked for a continuance. The pre-trial was continued until October 4, 2006. (R. 027-28). On October 4, 2006, a jury trial was scheduled for January 11 and 12, 2007, with a final pre-trial scheduled for November 29, 2006. (R. 29-30).

At the November pre-trial, the Defendant's attorney represented that the Defendant had failed to provide information to his investigator and failed to maintain contact with him. The jury trial was confirmed but an additional pre-trial was scheduled for January 3, 2007. (R. 36-37). On January 3, 2007, the Defendant was in custody on an unrelated matter. The jury trial was confirmed for January 11, 2007. (R. 38-39).

On January 10, 2007, the Defendant's case was in front of the trial court for a pre-trial and a negotiation had been reached. The Defendant entered a plea of guilty to attempted possession of a controlled substance a class A misdemeanor and criminal mischief, a class A misdemeanor. The other charges were dismissed. The State also agreed to allow the Defendant to do a "diversion" on the attempted possession charge which in Weber County is a plea in abeyance. In addition, the State agreed to not ask for any jail time on the criminal mischief conviction. (R. 239/2-3). The plea agreement that was signed in open court stated that upon completion of drug counseling the charge would be dismissed. (R. 41-49). Bernie Allen from the Public Defender's Association represented the Defendant at this stage of the proceedings.

On January 26, 2007, the Defendant filed a pro se motion to withdraw her guilty plea. (R. 50). She attached an affidavit in support of her motion to withdraw the guilty plea. In the affidavit, she alleged that her attorney

convinced her that if she didn't plead guilty she would go to prison. She also alleged that she believed that he would do his best to make sure she lost, that he called her names and made her feel like an idiot. (R. 51).

On the same day, the Defendant filed a "pro se" motion to suppress evidence and a petition and order for injunctive relief against the Ogden City Police Department. (R. 51-55). The Defendant included a copy of the police report where the officer stated that that while "doing a search of Stacy's purse in the jail, I located a small baggy containing approx. .35 grams of Amphetamines tucked in the bottom of a center pocket of Stacy's purse." (R. 56).

On March 7, 2007, the Defendant was in court for a review on her motion to withdraw the guilty plea. The Defendant informed the court that she didn't want to be represented by the public defenders because they disagreed with her motion to withdraw her guilty plea. The court continued the matter until March 21, 2007, so she could hire private counsel. (R. 84). On March 21, 2007, the Defendant appeared in court and indicated that she would be representing herself. A hearing on the motion to withdraw the guilty plea was scheduled for April 25, 2007. (R. 86).

On April 25, 2007, the trial court granted the Defendant's motion to withdraw her guilty plea. All of the original charges were re-instated. Roy

Cole, an attorney with the public defender's office, indicated that he would represent her and requested that a jury trial be scheduled. Trial was scheduled for June 14 and 15, 2007. (R. 88-89). The trial was changed to a pre-trial and on June 15, 2007, the jury trial was rescheduled for September 20, 2007, with a final pre-trial scheduled for September 5, 2007. (R. 98-99).

The Defendant failed to appear at the pre-trial on September 5, 2007, and a warrant for her arrest was issued. (R. 106-07). On September 19, 2007, the Defendant filed a "pro se" motion to dismiss charges. In this motion she cited the U.S. Code, Title 18, 3161 and asked to have the charges dismissed because she hadn't been brought to trial within seventy days. (R. 111).

The Defendant's trial was held on September 20 and 21, 2007. She was convicted of all five charges. (R. 181-183). The Defendant was referred to Adult Parole and Probation ("AP&P") for a pre-sentence report. Sentencing was scheduled for November 7, 2007. (R. 183).

On October 24, 2007, the Defendant filed a "pro se" motion for a new trial. (R. 188). She included a supporting affidavit. In her affidavit she stated that she had filed a motion to suppress evidence which was not ruled on. She believed that this was an error that affected her rights. She also complained of her attorney and the prosecutor. (R. 189).

On November 7, 2007, the sentencing was continued until November 21, 2007, so all of the parties could review the Defendant's motion. (R. 198-99). On November 13, 2007, the Defendant filed a hand written "pro se" objection to AP&P's recommendation. The objection was twelve pages long. In it she took exception with the jail sentence that was recommended, the factual background, her criminal history, statements she allegedly made to the pre-sentence investigator, the victim impact statement, restitution, her substance abuse history and the collateral contacts. (R. 201-212).

On November 21, 2007, the Defendant's motion for a new trial was denied. She was also sentenced on this day. She was sentenced to a term of zero to five years at the Utah State Prison. The prison sentence was suspended, and she was placed on probation and ordered to serve one hundred eighty days (180) in the Weber County Jail. She was sentenced to three six-month sentences and a one-year sentence on the misdemeanor convictions. The jail time for those offenses was suspended. (R. 213-216). The final order was signed on November 26, 2007. (R. 217). A notice of appeal was filed on November 28, 2007. (R. 218).

STATEMENT OF THE FACTS

On April 1, 2006, Andrew McGeorge and Matthew McBride went to a bar called the Wine Cellar in Ogden and consumed alcohol and played pool.

(R. 240/94-96). They left the Wine Cellar at 1:30 A.M. and went to Denny's to get some food. At Denny's they ran into Billy Elmer ("Billy") and two females who were with Billy. The Defendant was one of the females with Billy. Andrew knew Billy but he didn't know the two females. (R. 240/96-99).

Andrew and Matthew returned to Andrew's residence, and Billy and the two females arrived a short time later. (R. 240/101-04). Andrew was in his computer room checking his My-Space account to see if his wife, who was out of town, had sent him a message. The Defendant was in the room with Andrew. (R. 240/104). Andrew testified that the Defendant propositioned him. She told him that she would have sex with him for two hundred fifty dollars. (\$250.00). Andrew told her that she wasn't worth it, and she became upset. (R. 240/105).

Andrew testified that the Defendant threw a candle at him and called him some names. (R. 240/105-06). The candle hit him in his shoulder. (R. 240/107). Andrew told her to get out of his house. The Defendant went to grab her purse, which was by a plate. She picked up the plate and threw it at Andrew. (R. 240/107). The Defendant also clawed and scratched Andrew. She ran into the kitchen and called her bouncer to "beat up" Andrew. (R. 240/111-13). Andrew told her again to get out of his house. She eventually ran out of the house. Andrew locked the door behind her. She went back to

the front door; and when she realized that the door was locked, she took her shoe off and broke Andrew's window with it. (R. 240/113-14).

The Defendant then picked up a rock and threw it through the Defendant's living room window. He called 9-1-1 when the second window was broken. (R. 240/116-17). Before Andrew called 9-1-1, he called his brother to come up and protect him in case the bouncer arrived. When Andrew's brother arrived the Defendant was still outside by her car. He walked up to her and asked what was going on. The Defendant told him that she was going to beat up his brother. He told her "no you're not" and she attacked him. At about this time the police arrived. (R. 240/117-18).

Andrew's brother, Michael McGeorge, testified that Andrew called him at about five a.m. and told him that he needed him to come over because a bouncer was on his way over to kill him. (R. 240/167-68). When Michael arrived he noticed the Defendant seated in a vehicle and Matt McBride was talking to her. (R. 240/170). Michael approached the vehicle and asked Matt what was going on. Michael testified that the Defendant jumped out of the car and started yelling at him. She asked Michael if he wanted to fight her. Michael testified that he said he doesn't hit girls, and she punched him in the face. (R. 240/169-171).

Officer Aaron Hawes from the Ogden Police Department arrived on the scene. After he spoke with the witnesses and witnessed the damage inside the home he placed the Defendant in handcuffs and put her in the front passenger seat in his vehicle. (R. 240/188-89). While Officer Hawes was putting the Defendant in his vehicle she was calling him a “fucking asshole” and “piece of shit.” (R. 240/190).

Officer Hawes then began “inventorying” her vehicle because he had decided to impound it. Officer Hawes noticed her purse inside her vehicle on the passenger seat. He opened it up and noticed almost six hundred dollars in of small bills. As Officer Hawes was counting the money, the Defendant opened the door and started yelling at the officer to not touch her money. Officer Hawes went back to his vehicle and seat belted her back in. She opened the door a second time and then put her foot in the door blocking it so he couldn’t shut the door. (R. 240/192).

Another officer arrived to help restrain the Defendant. She was placed in another patrol vehicle for transport to the jail. (R. 240/192). Officer Hawes took her purse so she would have her identification and her money at the jail. (R. 240/192-93). Another officer transported the Defendant to the jail and (R. 240/197) Officer Hawes followed them. He took her inside to the booking area and started doing the paperwork. He had her purse with him. An officer

at the jail started “inventorying” the purse. Officer testified that this was done to make sure that she didn’t have any “drugs, weapons, . . . anything that could do another inmate harm or - - basically to make sure they don’t have anything that they shouldn’t have.” (R. 240/198).

After some leading questions from the prosecutor, Officer Hawes agreed that the inventory was also for safe keeping because the purse was going to be put in a locker in her name. (R. 240/198). Officer Hawes testified that during this “inventory” a little baggie was discovered that had methamphetamine in it. (R. 240/199).

SUMMARY OF ARGUMENTS

The Defendant filed a motion to suppress the evidence that was found in her purse. The purse was originally found in her vehicle during an impound inventory of the vehicle. The purse was then transported to the Weber County Jail where it was more thoroughly searched. During that search methamphetamine was allegedly found. Defendant filed a motion to suppress the evidence. She was not given a hearing on that motion, and her motion was never addressed. She did not have the opportunity to cross-examine the police officer or to present evidence on that issue. For this reason she respectfully requests that her conviction be vacated and the matter be remanded back to the trial court to address her Fourth Amendment concerns.

ARGUMENT

The Defendant filed a motion to suppress the evidence (methamphetamine) that was found in her purse during a search of it at the jail. This motion was never addressed, and the Defendant was not given the opportunity to cross-examine the police officer concerning the search and his departmental policies on impounding vehicles and conducting vehicle impounds.

In *State v. Curry*, 2006 UT App 390, this Court addressed a situation where a defendant was denied the right to have his attorney present during a suppression hearing. This Court held that “[t]he suppression hearing constituted a critical stage of the proceeding because it was Defendant’s opportunity to contest the admissibility of the evidence upon which the City’s entire case against him was based.” *Id.* at ¶ 9.

While *Curry* stands for the narrow holding that a defendant has a Sixth Amendment right to have an attorney present at a suppression hearing, the legal reasoning and analysis is applicable in the case at bar. In *Curry*, the Defendant received the suppression hearing although he was not represented by counsel and was not given the opportunity to present evidence or cross-examine the State’s witnesses. In the case at bar, the Defendant was not given a hearing or subsequent findings of fact and conclusions of law.

The Defendant filed her motion to suppress on January 26, 2006. This was the same day she filed a motion to withdraw her guilty plea. She filed both motions “pro se”. While the motion to withdraw the guilty plea was addressed and eventually granted, the motion to suppress evidence was ignored.

In her motion the Defendant challenged the search of her purse. Her purse was seized from her vehicle after the officer made the decision to impound the vehicle. The purse was then transported to the jail where it was searched as part of an “inventory.” Fourth Amendment issues are very fact sensitive. “A Fourth Amendment analysis of police officer conduct is fact sensitive . . .” *State v. Smith*, 781 P.2d 879, 880 (Utah Ct. App. 1989). For these reasons the Defendant is entitled to a hearing where she can cross-examine the officer, present her version of the facts and where the trial court can issue findings of fact and conclusions of law.

The fact this search revolved around an impound of a vehicle that was not involved in the crime makes a hearing even more critical. For an inventory search of an impounded vehicle to be lawful the officer conducting the search must follow standardized procedures. The State has the burden of introducing evidence that the department has a standardized, reasonable procedure “and that the challenged police activity was essentially in conformance with that

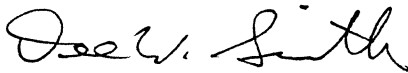
procedure.” *State v. Giron*, 943 P.2d 1114, 1117 (Utah Ct. App. 1997)(citations omitted). Without a hearing the trial court was unable to determine if the Ogden Police Department has a standardized, reasonable procedure or whether it was followed in this case.

Defendant preserved this issue for appeal when she filed her original motion to suppress. She also raised it in an affidavit for a new trial that she filed following her conviction. (R. 189). Since the Defendant’s motion to suppress was never addressed or ruled on, the Defendant’s conviction should be reversed; and the matter should be remanded to the trial court so Defendant’s Fourth Amendment issues can be litigated.

CONCLUSION

The Defendant was not given a hearing or a ruling on the motion to suppress that she filed. For this reason, the matter should be remanded to the trial court so that her Fourth Amendment issues can be litigated.

DATED this 18th day of June 2008.



DEE W. SMITH
Attorney for Appellant

CERTIFICATE OF MAILING

I certify that I mailed two copies of the foregoing Brief of Appellant to Ryan Tenney, Assistant Attorney General, Attorney for the Plaintiff, 160 East 300 South, 6th Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0180, postage prepaid this 18th day of June 2008.



DEE W. SMITH
Attorney at Law

ADDENDUM A

SECOND DISTRICT COURT

2007 NOV 26 P 3:30

SECOND DISTRICT COURT - OGDEN
WEBER COUNTY, STATE OF UTAH

STATE OF UTAH, : MINUTES
Plaintiff, : APP SENTENCING
: SENTENCE, JUDGMENT, COMMITMENT
: NOTICE
:

vs. : Case No: 061901672 FS

STACEY MARIE NIELSEN, : Judge: W BRENT WEST
Defendant. : Date: November 21, 2007

NOV 27 2007

PRESENT

Clerk: dianemw

Prosecutor: TERAL L. TREE

Defendant

Defendant's Attorney(s): ROY COLE (PDA)

Agency: Adult Probation and Parole

DEFENDANT INFORMATION

Date of birth: January 1, 1974

Video

Tape Number: 2A112107 Tape Count: 1036 - 1047

CHARGES

1. ILLEGAL POSS/USE OF CONTROLLED SUBSTANCE (amended) - 3rd Degree
Felony

Plea: Not Guilty - Disposition: 09/21/2007 Guilty

2. SIMPLE ASSAULT - Class B Misdemeanor

Plea: Not Guilty - Disposition: 09/21/2007 Guilty

3. SIMPLE ASSAULT - Class B Misdemeanor

Plea: Not Guilty - Disposition: 09/21/2007 Guilty

4. CRIMINAL MISCHIEF - Class A Misdemeanor

Plea: Not Guilty - Disposition: 09/21/2007 Guilty

5. INTERFERING W/ LEGAL ARREST - Class B Misdemeanor

Plea: Not Guilty - Disposition: 09/21/2007 Guilty

Sentence, Judgment, Commitment



Case No: 061901672
Date: Nov 21, 2007

HEARING

This is before the Court for sentencing. Respective counsel address the Court. Defendant's motion for a new trial is denied. Mr. Cole is requesting that if the defendant is sentenced to a jail term, that she be allowed to remain out so she can assist counsel in the appeal. Court finds no legal basis why sentence should not be imposed.

SENTENCE PRISON

Based on the defendant's conviction of ILLEGAL POSS/USE OF CONTROLLED SUBSTANCE a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.
The prison term is suspended.

SENTENCE JAIL

Based on the defendant's conviction of ILLEGAL POSS/USE OF CONTROLLED SUBSTANCE a 3rd Degree Felony, the defendant is sentenced to a term of 180 day(s)
Based on the defendant's conviction of SIMPLE ASSAULT a Class B Misdemeanor, the defendant is sentenced to a term of 6 month(s)
The total time suspended for this charge is 6 month(s).
Based on the defendant's conviction of SIMPLE ASSAULT a Class B Misdemeanor, the defendant is sentenced to a term of 6 month(s)
The total time suspended for this charge is 6 month(s).
Based on the defendant's conviction of CRIMINAL MISCHIEF a Class A Misdemeanor, the defendant is sentenced to a term of 1 year(s) The total time suspended for this charge is 1 year(s).
Based on the defendant's conviction of INTERFERING W/ LEGAL ARREST a Class B Misdemeanor, the defendant is sentenced to a term of 6 month(s) The total time suspended for this charge is 6 month(s).

Credit is granted for time served.

Case No: 061901672
Date: Nov 21, 2007

SENTENCE FINE

Charge # 1 Fine: \$5500.00
 Suspended: \$5000.00
 Surcharge: \$243.24
 Due: \$500.00

Charge # 2 Fine: \$1000.00
 Suspended: \$1000.00

Charge # 3 Fine: \$1000.00
 Suspended: \$1000.00

Charge # 4 Fine: \$2500.00
 Suspended: \$2500.00

Charge # 5 Fine: \$1000.00
 Suspended: \$1000.00

 Total Fine: \$11000
 Total Suspended: \$10500
 Total Surcharge: \$243.24
 Total Principal Due: \$500

 Plus Interest

County Attorney Fees Amount: \$125.00 Plus Interest
Pay in behalf of: WEBER COUNTY TREASURER

ORDER OF PROBATION

The defendant is placed on probation for 36 month(s).
Probation is to be supervised by Adult Probation and Parole.
Defendant to serve 180 day(s) jail.

Defendant is to pay a fine of 500.00 which includes the surcharge.
Interest may increase the final amount due.

Case No 061901672
Date Nov 21, 2007

PROBATION CONDITIONS

The defendant shall enter into an agreement with the Utah State Department of Adult Probation & Parole and comply strictly with its terms and conditions

The defendant shall report to the Department of Corrections and to the court whenever required

The defendant shall violate no law, either federal, state or municipal

The defendant shall serve 180 days in the Weber County Jail with credit for time served Defendant is granted a work release Court continues matter to 12-19-2007 at 9 00 am to allow the defendant the opportunity to file a certificate of probable cause.

If this certificate is not filed, the defendant shall be prepared to surrender herself to begin serving the jail sentence The defendant is required to report to Adult Probation & Parole to comply with other probation requirements

The defendant shall pay the following financial obligations through Adult Probation & Parole:

a) \$500 00 fine, and

b) \$125 00 public defender fee

The defendant shall successfully complete and alcohol/drug treatment program as deemed appropriate by her probation officer

The defendant shall not consume nor possess any alcohol or illegal drugs nor frequent with persons or places where alcohol or illegal drugs are available

The defendant shall submit to random search, seizure and chemical testing without a warrant

The defendant shall provide a DNA sample and pay \$100 00 to the collecting agency

The defendant shall successfully complete the Thinking for a Change program

The defendant shall undergo a mental health evaluation and successfully complete such treatment as deemed appropriate by her probation officer

Case No: 061901672
Date: Nov 21, 2007

REVIEW OF SENTENCE is scheduled.

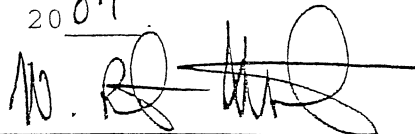
Date: 12/19/2007

Time: 09:00 a.m.

Location: 2nd Floor Northwest
Second District Court
2525 Grant Avenue
Ogden, UT 84401

Before Judge: W BRENT WEST

Dated this 26th day of NOVEMBER, 2007



W BRENT WEST
District Court Judge

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) should call Stella Perea at (801)395-1062 at least three working days prior to the proceeding. (For TTY service call Utah Relay at 1-800-346-4128 or 711) The general information phone number is (801) 395-1079.

ADDENDUM B

Stacy Nielsen
545 West 2300 North
Harrisville, Utah
801-814-4119

SECOND DISTRICT COURT
2007 JAN 26 PM 5:55

JAN 30 2007

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER
COUNTY STATE OF UTAH

STATE OF UTAH,
Plaintiff

VS

STACY MARIE NIELSEN
Defendant

MOTION TO SUPPRESS EVIDENCE

CASE NO. 061901672

JUDGE WEST

U.S. Supreme Court Decision United States v. Edwards requires police to obtain a search warrant to search personal property in jail. Defendant motions this court to suppress evidence obtained in an illegal search conducted by Officer Hawes and admitted in his own police report. He had already made an inventory of the purse at the arrest site, as did several other officers. None of them found drugs. Officer Hawes took my money out of my locked glove compartment and put it in my purse and then insisted we bring my purse to the jail. I agreed after he said my car was going to be towed knowing that the tow company would have a key to my car and could easily take my money.

DATED 1-26-07

SIGNED Stacy Nielsen

Defendant, pro se

Motion to Suppress Evidence

